



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

E-178948

40110  
October 26, 1973

Mr. John Joseph Moss  
Counsellor at Law  
116 Austin Street  
Cambridge, Massachusetts 02139

Dear Mr. Moss:

For the reasons that follow, we are denying your protest submitted by letter dated June 19, 1973, on behalf of Linguistic Systems, Inc. (LSI), against the rejection of ~~its~~ proposal, without referral to the ~~Small Business Administration (SBA) for certificate of competency (COC)~~ proceedings under request for proposals (RFP) SRS-73-15, issued by the Social and Rehabilitation Service (SRS), Washington, D. C.

The RFP required proposals for scanning and abstracting services of scientific professional material in the field of mental retardation for quarterly publication of the Mental Retardation Abstracts. The RFP, a total small business set-aside, stated that for the " \* \* \* purpose of determining the proposal that best serves the interest of the Government \* \* \*" the proposal evaluation criteria would be one-third each for: (1) technical qualification of proposed personnel; (2) performance and overall experience; and (3) reputation in carrying out similar tasks and degree of understanding of the project evidenced by the proposal.

The eight proposals received were forwarded to a Technical Review Panel for technical evaluation. On a possible scale of 3.0 points, the technical review found only Herner Information Services, Inc. (Herner) acceptable at 2.66 points, Capitol Systems Group, Inc., capable of being made acceptable at 1.65, and the other six offerors technically unacceptable. LSI and two firms were rated 1.33. Subsequently, award was made to Herner.

LSI states that on June 13, 1973, at its request, the project officer conducted a telephone conference to respond to LSI's inquiries concerning the reasons it was not awarded the contract. During the conversation, LSI states that the project officer, who was the non-voting Chairman of the Evaluation Review Board, advised that the Herner proposal alone was deemed technically acceptable. He further stated that while a second proposal was found unacceptable, but capable of being made

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acceptable with minor revisions, LSI and two other proposals were tied for third, also as unacceptable but capable of being made acceptable with minor revisions. After further discussion of the deficiencies of the LSI proposal, in response to a question from LSI, the project officer agreed that the deficiencies amount to a judgment by the review board that LSI lacked the capacity to perform; i.e., facilities, quality, ability, experience.

On the basis of the foregoing, LSI protested to our Office that since the procurement was a total small business set-aside, any negative determination concerning an offeror's capacity to perform should have been referred to SBA for possible issuance of a COC. LSI further protests that award to Harner was not the most advantageous to the Government since LSI's offered price was 38 percent lower.

The file contains a memorandum from the project officer to the contracting officer which indicates that LSI misconstrued statements made during the telephone conversation concerning the acceptability of LSI's proposal. However, we need not resolve that problem. It is clear from the record that the review board's evaluation found LSI's proposal technically unacceptable and it could not be made acceptable without major revisions. The determination of a competitive range for purposes of further negotiations is a technical judgment reserved primarily for the procurement activity which our Office will not question unless rendered arbitrarily, capriciously or in bad faith. There is no indication that LSI's proposal was deemed unacceptable for reasons related to its capacity to perform the work as contemplated in Federal Procurement Regulations (FPR) 1-1.708-2(a). While any misunderstanding which may have resulted from the telephone conference is regrettable, any information proffered by way of explanation cannot offset the technical determination of the review board.

Our Office considered the same contention from LSI in B-177822, July 16, 1973. In that case, in response to LSI's contention that it believed its proposal was acceptable and should have been forwarded to SBA for a COC, we stated:

"Although it may appear that rejection of your technical proposal for failure to understand the scope of work implies that your responsibility as a prospective contractor was a factor, we held in B-170890, November 18, 1970, that a determination of this nature relates to the question of whether the proposal is technically acceptable and within a competitive technical range for negotiation procedures and does not involve matters of capacity and credit which must be judged by SBA. See 15 U.S.C. 637(b)(7) and 45 Comp. Gen. 893 (1967).

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"Consequently, it was not necessary for the contracting officer to institute certificate of competency procedures when he rejected your offer."

In light of the foregoing and since price is not necessarily the controlling factor in a negotiated procurement, it is our view that the contracting officer's actions were proper.

Concerning the telephone conference procedure, the HEW report notes that the problems encountered here could have been avoided had a formal debriefing been arranged in accordance with HSWPR 3-3.150-50, and has taken steps to preclude its recurrence.

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States